

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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IN RE TERRORIST ATTACKS ON SEPTEMBER 11, 2001 :
: 1:03 MDL 1570 (GBD)(SN)
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This Document Relates to
Havlish, et al. v. Iran, et al.
1:03-cv-9848 (GBD)(SN)
Expedited Review Requested

**REPLY IN SUPPORT OF THE HAVLISH CREDITORS' UNOPPOSED MOTION TO
LIFT STAY OF JUDICIAL ENFORCEMENT OF WRIT OF EXECUTION**

Judgment Creditors Fiona Havlish, et al. (the “Havlish Creditors”), by and through their undersigned counsel, respectfully submit this brief reply in support of their Unopposed Motion to Lift the Stay of Judicial Enforcement of Writ of Execution.

On February 15, 2022, counsel for the *Ashton*, *Bauer*, and *Burlingame* Plaintiffs and counsel for the *Burnett* and *O’Neill* Plaintiffs filed separate but substantially similar letters purporting to oppose the Motion (collectively, “Oppositions”). MDL Dkts. 7669, 7670. The Oppositions are not grounded in any applicable law and, indeed, do not cite a single case or statute. The Oppositions do not contest that the Court’s stay was imposed at the request of the Government for the express purpose of “permit[ting] the government time to prepare a statement of interest pursuant to 28 U.S.C. § 517.” *Havlish* Dkt. 551 at 1. Because the Government has now filed its Statement of Interest, there is no further need for the Government’s requested stay to remain in place, as the Government itself agrees. *See* Mitchell Decl. ¶ 7; *see also* Mem. of Law 2–3.

The opposing non-parties appear to be under the misapprehension that lifting the Court’s stay will result in the immediate transfer of the assets of Da Afghanistan Bank (“DAB”) from the Federal Reserve Bank of New York (“FRBNY”) to the Havlish Creditors. That is not how this will work. As the Government has suggested, the Havlish Creditors seek to lift the stay so that any concerned party can “pursue [their] claims in court.” *See Background Press Call by Senior Administration Officials on U.S. Support for the People of Afghanistan*, White House (Feb. 11, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/11/background-press-call-on-u-s-support-for-the-people-of-afghanistan/>. As they have made clear, the Havlish Creditors intend to move this Court for partial turnover of the DAB assets at the FRBNY, as they are entitled to do under the laws of the United States and the state of New York. *See* Fed. R. Civ.

P. 69(a); N.Y. C.P.L.R. § 5225(b); *CSX Transp., Inc. v. Island Rail Terminal, Inc.*, 879 F.3d 462, 468 (2d Cir. 2018); *see also Havlish* Dkt. 561 at 2 (“The Havlish Creditors intend to immediately ask the Court to lift the stay of enforcement so that they may file a motion seeking an order compelling FRBNY to turn over a portion of the DAB assets.”); Mem. of Law 1 (“[R]esolution of the stay is necessary for the Havlish Creditors to initiate proceedings for partial turnover of Taliban assets in an amount equal to the Havlish Creditors’ compensatory damages.”). That turnover motion will mark the beginning of those enforcement proceedings—not the end. To the extent the Court determines that any other party has an interest adverse to enforcement of the *Havlish* Writ and should be heard, those interests can be heard (with leave of the Court) in the turnover proceeding. *See* C.P.L.R. § 5225(b).

Contrary to the Oppositions’ confused insinuations, briefing about whether to lift the stay is not the appropriate place to raise issues related to the propriety of granting turnover. The Havlish Creditors will thoroughly address the issues raised by the Statement of Interest of the United States in their forthcoming turnover motion pursuant to C.P.L.R. § 5225(b), which under state and federal law is the appropriate judicial mechanism to resolve disputes related to judgment creditors’ enforcement of a writ of execution. *See Hausler v. BNP Paribas S.A.*, 169 F. Supp. 3d 531, 537 (S.D.N.Y. 2016). And again, any other parties properly before the Court may raise issues concerning enforcement at that time.

Finally, we stress that the urgency of our Motion stems in part from the Government’s request for clarification that \$3.5 billion in DAB assets are not encumbered by the Havlish Creditors’ writ and may be freely transferred for the benefit of the people of Afghanistan. *See* Mot. 1; *see also Havlish* Dkt. 563 (U.S. Statement) at 3 (“The OFAC License’s authorization and directive to make certain DAB Assets available for the benefit of the Afghan people cannot be

implemented until this Court confirms, for the reasons discussed below, that the writs of execution served by the [Plaintiffs in *Doe* and *Havlish*] are no obstacle.”). The sooner that these proceedings move forward, the sooner those funds may be applied in service of urgent humanitarian needs.

For all of these reasons, the Havlish Creditors’ Motion should be granted.

Dated: February 16, 2022

Respectfully submitted,

/s/ Lee S. Wolosky

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